

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEVONTE BERNARD HARRIS,

Plaintiff,

v.

E. MUNOZ, J. CERDA,

Defendants.

Case No. 1:21-cv-01372-HBK (PC)

FINDINGS AND RECOMMENDATIONS TO
DENY PLAINTIFF'S MOTION FOR A
TEMPORARY RESTRAINING ORDER OR
PRELIMINARY INJUNCTION

(Doc. No. 2)

FOURTEEN-DAY OBJECTION PERIOD

Plaintiff Devonte Bernard Harris initiated this action as a state prisoner proceeding *pro se* by filing a civil rights complaint under 42 U.S.C. § 1983 on September 14, 2021. (Doc. No. 1). Plaintiff concurrently moved for a temporary restraining order or a preliminary injunction. (Doc. No. 2). Plaintiff files his declaration in support of his motion *sub judice*. (*Id.* at 9-14). On October 8, 2021, Plaintiff paid the \$402.00 filing fee. (*See* Receipt No. CAE1000049286).

For the reasons discussed below, the undersigned recommends that the district court deny Plaintiff's motion.

I. BACKGROUND AND ALLEGED FACTS

A. Complaint

At this stage of the proceedings, the Court accepts the allegations in the Complaint as true. The Complaint alleges a First Amendment retaliation claim against two correctional officials at CSP-Corcoran: E. Munoz, correctional officer, and J. Cerda, a sergeant, in their official and

1 individual capacities. (Doc. No. 1 at 1-3). The incident giving rise to the cause of action
2 occurred on November 2, 2020, after Plaintiff had been returned to his cell from suicide watch.
3 (*Id.* at 4). Plaintiff asked Munoz to submit a canteen slip on his behalf, but Munoz refused and
4 told him to submit it through the mail. (*Id.*). The instructions on the form specifically state not to
5 submit the canteen form in the mail so Plaintiff knocked on his cell door with the state-issued cup
6 to get another correctional officer's attention. (*Id.*). A different guard came and turned in
7 Plaintiff's canteen slip. (*Id.* at 5). The next day, on November 3, 2020, when Munoz was
8 performing a security check in Plaintiff's area, he "knocked the sensor baton against his cell door
9 window and cracked the window." (*Id.*).

10 Over the next few weeks, Plaintiff requested maintenance to fix his window and contacted
11 someone with the last name Cerda. (*Id.* at 5). Cerda told Plaintiff that Munoz took responsibility
12 for the broken window, but the window would not be repaired because only the outer layer of the
13 window was cracked. (*Id.* at 5-6). Plaintiff believed Cerda was "covering up" for Munoz. (*Id.* at
14 6). About three weeks later, Plaintiff filed an inmate grievance appeal regarding Cerda's cover-
15 up of Munoz's actions. (*Id.*).

16 Plaintiff tested positive for Covid-19 on November 26, 2021 and was moved to an
17 isolation building. (*Id.*). Plaintiff claims Munoz and Cerda learned about Plaintiff's appeal
18 grievances around this time. (*Id.*). Following his return from isolation, around December 15,
19 2021,¹ Plaintiff claims Munoz and Cerda moved Plaintiff's cell assignment to a different cell in a
20 "reclusive corner" of the correctional facility and acknowledged to him that they did so "as a
21 result of [plaintiff's] administrative appeal." (*Id.* at 6-7). When Plaintiff arrived in his new cell,
22 he noticed that many of the photographs of his friends and family, which previously hung in his
23 old cell, "were ruined." (*Id.* at 7). Munoz "admitted to the sabotage." (*Id.*)

24 These incidents caused Plaintiff's anxiety and suicidal thoughts to increase but, after
25 interviewing him, staff did not place him on suicide watch. On December 16, 2020, staff moved
26

27 ¹ Notably, it appears Plaintiff may have intended to write November- December 2020, but the Complaint
28 reflects the year 2021 inadvertently. (*See* Doc. No. 1 at 6-7).

1 him to a different housing unit. (*Id.* at 8). On December 20, 2020, Plaintiff filed a grievance
 2 appeal regarding Munoz and Cerda’s acts of retaliation. (*Id.*) In response to the grievance
 3 appeal, Munoz and Cerda “lied” and stated Plaintiff broke his cell window on September 11,
 4 2020. (*Id.* at 8).

5 Plaintiff admits he broke his window on that date to get a custodial response to an inmate
 6 having an emergency medical situation. (*Id.* at 8). But because the damage was on the inside of
 7 the cell window, his window was fixed on September 12, 2020. (*Id.* at 8). Plaintiff
 8 acknowledges he was sanctioned to 60-days loss of credit, 30-days loss of package privileges, and
 9 \$180.00 for breaking his window on September 11, 2020. (*Id.* at 9). As relief for these incidents,
 10 Plaintiff seeks monetary damages and a temporary restraining order or a preliminary and
 11 permanent injunction. (*Id.* at 10).

12 **B. Motion for TRO/PI**

13 In the motion *sub judice*, Plaintiff requests the court to order Munoz and Cerda, or their
 14 agents or employees to:

- 15 • return various legal and non-legal books, which he lists by name (Doc. No. 2 at 2);
- 16 • “dispose of legal material” related to active cases, which he defines as cases he is
 17 litigating or has the right to appeal (*id.*);
- 18 • cease and desist conducting cell searching in a manner that disorganizes his legal
 19 materials, including dumping legal material and not putting it back (*id.* at 3);
- 20 • cease and desist misapplying the definition of “contraband,” including but not
 21 limited to, legal paperwork, unauthorized source of CCR § 3000, plastic bags
 22 holding his legal work, unquantified peanut butter and coffee packs (*id.* at 3-4);
- 23 • cease and desist selectively enforcing contraband rules against Plaintiff, including
 24 but not limited to clothing, personal hygiene items, products, and
 25 book/magazine/newspaper limits (*id.* at 4);
- 26 • return his television because he is only on property restriction (*id.*);
- 27 • preserve Munoz’s body camera footage of cell searches on August 2, 2020 (*id.*);
- 28 • preserve body cam footage from numerous other correctional officers in relation to

1 cell searches of Plaintiff's cell (*Id.* at 5).

2 In argument, Plaintiff claims Munoz is retaliating against him by strictly enforcing contraband
3 rules and frequently searching his cell. (*Id.* at 13-14). He states that Munoz confiscated his legal
4 materials and told him he is trying to prevent Plaintiff from redressing his rights in court. (*Id.* at
5 7). Plaintiff alleges the cell search conducted "6 days after PREA² Complaint is suspect." (*Id.* at
6 8).

7 II. APPLICABLE LAW

8 Federal Rule of Civil Procedure 65 governs injunctions and restraining orders, and
9 requires that a motion for temporary restraining order include "specific facts in an affidavit or a
10 verified complaint [that] clearly show that immediate, and irreparable injury, loss, or damage will
11 result to the movant before the adverse party can be heard in opposition," as well as written
12 certification from the movant's attorney stating "any efforts made to give notice and the reasons
13 why it should not be required." Fed. R. Civ. P. 65(b).

14 Temporary restraining orders are governed by the same standard applicable to preliminary
15 injunctions, with the exception that preliminary injunctions require notice to the adverse party.
16 *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F.Supp.2d 1111, 1126
17 (E.D. Ca. 2001); *see also* Fed. R. Civ. P. 65(a). Eastern District of California Local Rule 231,
18 however, requires notice for temporary restraining orders as well, "[e]xcept in the most
19 extraordinary of circumstances," and the court considers whether the applicant could have sought
20 relief by motion for preliminary injunction at an earlier date. Local Rule 231(a)-(b) (E.D. Cal.
21 2019). A temporary restraining order "should be restricted to serving [its] underlying purpose of
22 preserving the status quo and preventing irreparable harm just so long as is necessary to hold a
23 hearing, and no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*
24 *Local No. 70*, 415 U.S. 423, 439 (1974).

25 A temporary restraining order is "an extraordinary remedy" and may be issued only if

26
27 ² The Court construes "PREA" to mean a complaint filed under the Prison Rape Elimination Act. The
28 Complaint makes no reference to Plaintiff filing a PREA complaint. Plaintiff's motion references a PREA
complaint involving two correctional guards alleged romantic interest in each other and does not involve
Plaintiff. (Doc. No. 2 at 11).

1 Plaintiff establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in
2 the absence of preliminary relief; (3) that the balance of equities tips in his/her favor; (4) that an
3 injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
4 Plaintiff bears the burden of clearly satisfying all four prongs. *Alliance for the Wild Rockies v.*
5 *Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). A TRO will not issue if Plaintiff merely shows
6 irreparable harm is possible – a showing of likelihood is required. *Id.* at 1131. The Ninth Circuit
7 also has a second test, holding that a party requesting relief is entitled to a preliminary injunction
8 if it demonstrates: (1) a combination of probable success on the merits and the possibility of
9 irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply
10 in its favor. *Zepeda v. U.S. Immigr. & Naturalization Serv.*, 753 F.2d 719, 727 (9th Cir. 1985);
11 *see also McKinney v. Hill*, 925 F.2d at 1470 (9th Cir. 1991) (noting same).

12 Significant, and applicable here, is that a federal court does not have personal jurisdiction
13 over the parties and subject matter jurisdiction over the claim if no defendant has been served in
14 the action. *Zepeda*, 753 F.2d at 727 (9th Cir. 1985) (if no defendant has been served with process
15 then injunctive relief is premature).

16 The injunctive relief an applicant requests must relate to the claims brought in the
17 complaint. *See Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th Cir.
18 2015) (“When a Plaintiff seeks injunctive relief based on claims not pled in the complaint, the
19 court does not have the authority to issue an injunction.”). Absent a nexus between the injury
20 claimed in the motion and the underlying complaint, the court lacks the authority to grant Plaintiff
21 any relief. *Id.* at 636.

22 The Prison Litigation Reform Act (“PLRA”) imposes additional requirements on prisoner
23 litigants seeking preliminary injunctive relief against prison officials. In such cases,
24 “[p]reliminary injunctive relief must be narrowly drawn, extend no further than necessary to
25 correct the harm the court finds requires preliminary relief, and be the least intrusive means
26 necessary to correct that harm.” 18 U.S.C. § 3626(a)(2); *Villery v. California Dep't of Corr.*,
27 2016 WL 70326, at *3 (E.D. Cal. Jan. 6, 2016). As the Ninth Circuit has observed, the PLRA
28 places significant limits upon a court’s power to grant preliminary injunctive relief to inmates,

1 and “operates simultaneously to restrict the equity jurisdiction of federal courts and to protect the
 2 bargaining power of prison administrators—no longer may courts grant or approve relief that
 3 binds prison administrators to do more than the constitutional minimum.” *Gilmore v. People of*
 4 *the State of California*, 220 F.3d 987, 998-99 (9th Cir. 2000). The court’s jurisdiction is “limited
 5 to the parties in this action” and the pendency of an action “does not give the Court jurisdiction
 6 over prison officials in general or over the conditions of an inmate's confinement unrelated to the
 7 claims before it.” *Beaton v. Miller*, 2020 WL 5847014, at *1 (E.D. Cal. Oct. 1, 2020). If a
 8 prisoner has been transferred, any sought injunctive relief against the previous facility becomes
 9 moot if the prisoner “has demonstrated no reasonable expectation of returning to [the prison].”
 10 *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991); *Florence v. Kernan*, 813 F. App’x 325, 326
 11 (9th Cir. 2020). Finally, state governments have “traditionally been granted the widest latitude in
 12 the dispatch of [their] own internal affairs.” *Rizzo v. Goode*, 423, U.S. 362, 378 (1976) (citations
 13 omitted). This deference applies even more strongly when the court is asked to involve itself in
 14 the administrative decisions of a prison. *See Turner v. Safely*, 482 U.S. 78, 85 (1987); *Sandin v.*
 15 *Conner*, 515 U.S. 472, 482-83 (1995).

16 **III. DISCUSSION**

17 Having reviewed Plaintiff’s motion and declaration incorporated therein, the undersigned
 18 does not find Plaintiff has satisfied his burden to warrant issuance of this extraordinary remedy.
 19 As a threshold matter, Plaintiff has not complied with Local Rule 231(d). There is no showing of
 20 actual or attempted notice, and other than requesting the relief, Plaintiff fails to provide any
 21 briefing, other than conclusory statements, on the implicated legal issues. Nor does Plaintiff
 22 provide any affidavits attesting to imminent irreparable harm or include a proposed order that
 23 includes a provision for bond.

24 Plaintiff essentially takes issue with various actions taken by Defendant Munoz and other
 25 correctional officials who are not named in the complaint over a span of time that have resulted in
 26 certain of his personal and legal property being removed and/or restricted. The actions are
 27 unrelated from each other, except that Plaintiff labels all of them as being done for retaliatory
 28 purposes. Even if true, Plaintiff has not sufficiently alleged he is at risk of imminent harm. *El-*

1 *Shaddai v. B. Wheeler*, Case No. CIV-S-06-1898 FCD EFB P, 2008 WL 4736915 *2 (E.D. Cal.
2 Oct. 28, 2008) (denying motion for a preliminary injunction when the prisoner-plaintiff's alleged
3 acts of retaliation were not connected to the reasons he seeks a preliminary injunction and no
4 imminent harm).

5 Further the Court does not have personal jurisdiction or subject matter jurisdiction over
6 defendants, because neither Defendant has received service of process because this case remains
7 subject to the screening provisions of § 1915A. *See Zepeda v. U.S. Immigr. & Naturalization*
8 *Serv.*, 753 F.2d 719, 727 (9th Cir. 1985) ("A federal court may issue an injunction if it has
9 personal jurisdiction over the parties and subject matter jurisdiction over the claim; it may not
10 attempt to determine the rights of persons not before the court.")

11 While Plaintiff complains he has endured routine searches of his cell which has resulted in
12 the confiscation of his property designated as "contraband" in retaliation for him filing inmate
13 grievances concerning his broken cell window and the alleged coverup thereafter, he also
14 acknowledges correctional officials are applying the standard operating rules to him when in the
15 past they apparently had granted him leniency. (*See* Doc. No. 2 at 4) (noting "selective
16 enforcement" where "administrative indifference is commonly practiced"). In other words,
17 Plaintiff's primarily takes issue with correctional officials enforcing the institution's rules.
18 Plaintiff's claim that he is being impeded in his ability to litigate his legal actions is belied by the
19 fact that he has filed the instant action and accompanying motion. Further, he admits he has been
20 able to avail himself of the institution's administrative process, thereby showing the alleged acts
21 of retaliation did not defer him from pursuing relief. Finally, the actions complained of in the
22 motion, although characterized as taken in retaliation, differ from the retaliatory conduct
23 complained of in the Complaint. *See Pac. Radiation Oncology.*, 810 F.3d at 633. In particular,
24 the Complaint complains of actions that occurred in November 2020 and the events complained
25 of in the motion concern other events that took place at unspecified times and often involved
26 other correctional officials. (*See generally* Doc. No. 2). The undersigned finds this is not an
27 extraordinary circumstance warranting the issuance of a temporary restraining order or
28 preliminary injunction and recommends Plaintiff's motion should be denied.

Accordingly, it is **ORDERED**:

The Clerk of Court shall assign this case to a district judge.

It is further **RECOMMENDED**:

Plaintiff's motion for a temporary restraining order or a preliminary injunction (Doc. No. 2) be DENIED.

NOTICE TO PARTIES

These findings and recommendations will be submitted to the United States district judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, a party may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

Dated: December 8, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE